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May 20, 1996

VIA HAND DELIVERY

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RE: CC Docket No. 96-98

Dear Mr. Caton:

Please find enclosed for filing in the referenced docket the original and twelve copies of the Supplemental Comments of the District of Columbia Public Service Commission. These comments concern the issues of dialing parity, number administration, notice of technical changes, and access to rights of way. We are also delivering a copy directly to each of the Commissioners and the required copies to Gloria Shambley and Janice Myles.

Also enclosed is an additional copy that I would appreciate your date-stamping and returning to me with the messenger. Thank you for your kind assistance.

Sincerely,

Anthony M. Black

Enclosures

cc: Ms. Gloria Shambley
Ms. Janice Myles

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

SUPPLEMENTAL COMMENTS OF THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

I. INTRODUCTION

The Notice of Proposed Rulemaking ("NPRM") issued on April 19, 1996 in the above-captioned docket directed interested parties to file separate comments on certain issues on May 20, 1996. NPRM ¶ 290. Comments on all other issues were to be filed on May 16, 1996. ¶ 289. The District of Columbia Public Service Commission ("DCPSC") filed comments on all other issues on May 16. The DCPSC now submits separate comments, as required by the NPRM, on numbering administration, dialing parity, notice of technical changes, and access to rights-of-way issues.

II. ANALYSIS

A. Number Administration

The NPRM (¶ 252) tentatively concludes that the Commission's NANP Order[1] satisfies the requirement of section 251(e)(1) that the FCC designate an impartial entity to administer the NANP. The DCPSC tentatively agrees with this conclusion, subject to its consideration of the Commission's pending rulings on petitions for reconsideration of the NANP Order.

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[1] Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, FCC 95-283 (rel. July 13, 1995)(recon. pending).

Section 251(e)(1) expressly confers exclusive jurisdiction on the FCC over those portions of the NANP that pertain to the United States, but permits the FCC to delegate to state commissions "all or any portion of such jurisdiction." The NPRM tentatively concludes that the FCC should continue to delegate to state commissions "matters involving the implementation of new area codes, such as the determination of area code boundaries," so long as state commissions act consistently with FCC "numbering administration guidelines." ¶ 256. The Commission's 1995 Ameritech Order[2] would "continue to provide guidance to the states regarding how new area codes can be lawfully implemented." Id. The DCPSC tentatively agrees with the NPRM's proposal, subject to its consideration of the FCC's pending rulings on petitions for reconsideration of the Ameritech Order.

The NPRM asks for comment on what action the FCC should take "when a state appears to be acting inconsistently with...[the FCC's] numbering administration guidelines." ¶ 257. Section 251(e)(1) of the Act carves out numbering administration as a unique area of exclusive jurisdiction in which state commissions may act only if the FCC delegates jurisdiction to them. Therefore, on a showing that a particular state is acting in violation of FCC guidelines, the FCC may revoke its delegation of jurisdiction to that state. The DCPSC respectfully suggests, however, that FCC revocation of a delegation of jurisdiction

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[2] Proposed 708 Relief Plan and 630 Numbering Plan by Ameritech - Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995), recon. pending.

should never be necessary. To assure compliance the FCC need only advise a state commission that a proposed state action would violate an FCC guideline. So long as the FCC reasonably interprets its own guidelines, state commissions should follow the interpretations.

State action in other areas, however, is not by delegation of exclusive FCC authority. As the NPRM implicitly recognizes, the 1996 Act itself confers jurisdiction on the states in respect to both interstate and intrastate aspects of "interconnection, service, and network elements." ¶ 38. While the FCC's jurisdiction parallels state jurisdiction, such parallel jurisdiction may be exercised only if a state fails to act. In the absence of a state's failure to act, the FCC's authority is confined to the adoption of regulations that reasonably implement section 251. The FCC has no jurisdiction to revoke state authority granted by the 1996 Act.[3]

Until functions are transferred to the new NANP administrator, the NPRM proposes to maintain the current allocation of functions among several entities. ¶ 258. The DCPSC agrees with this proposal.

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[3] For this reason, the DCPSC agrees that it would be improper for the FCC to separate interstate from intrastate costs here. NPRM ¶ 120. Such a separation is necessary only when ratemaking jurisdiction over interstate and intrastate aspects of the same service is being divided between the FCC and states. See New York Tel. Co. v. F.C.C., 631 F.2d 1059 (2d Cir. 1980). Here the states are given express jurisdiction over both interstate and intrastate aspects of the services for ratemaking purposes, and the FCC has similar jurisdiction if a state fails to act.

B. Dialing Parity

As the NPRM recognizes (¶ 202), the 1996 Act provides a definition of dialing parity. That definition precludes reliance on access codes as a means of providing dialing parity to competitive telecommunications providers. The NPRM notes that only a minority of states currently provide for intraLATA dialing parity without access codes. ¶ 203. The NPRM further notes that presubscription to a particular carrier is a feature currently common to this minority of states, but some states are considering multiple carrier approaches. ¶ 210. The NPRM asks for comment on whether any individual state's approach to dialing parity should be adopted as a national requirement. Id.

Because the statute provides in this instance a generally applicable definition of the section 251 term, an FCC definition is unnecessary. Moreover, the record does not support adoption of any state's dialing parity method as a national requirement. The recently enacted requirements of the 1996 Act impose a general duty on carriers to provide dialing parity without access codes for the first time. In response to this NPRM, carriers may explain how they propose to fulfill their duty under the Act to provide for dialing parity without the use of access codes. Without such information, it is impossible to analyze whether a uniform approach to dialing parity is necessary or reasonable to satisfy the dialing parity requirement of the statute.

Section 251(b)(3) requires, in addition to dialing parity, "non-discriminatory access to telephone numbers, operator

services, directory assistance, and directory listings, with no unreasonable dialing delays." The NPRM proposes separate definitions of non-discriminatory access in respect to each specified service. ¶¶ 214-217. The DCPSC tentatively agrees with each proposed definition.

The NPRM also seeks comment on alternative definitions of the "dialing delay" period. ¶ 218. The DCPSC suggests that any definition should comprehend the period within the control of the carrier during which the carrier has the duty to provide service without unreasonable dialing delay. The DCPSC does not have information sufficient to suggest a specific period of time which, if exceeded, would constitute an "unreasonable" dialing delay.

C. Duty to Provide Public Notice of Technical Changes

Under section 251(c)(5), incumbent LECs have the duty to provide public notice of changes in the information necessary for the transmission and routing of services using the LECs' facilities or networks, and other changes that would affect the interoperability of those facilities and networks. The NPRM offers tentative definitions of "information necessary," "services," and "interoperability." ¶ 189. The NPRM tentatively concludes that to comply with section 251(c)(5) incumbent LECs must provide at least the following information: 1) date changes are to occur; 2) location of changes; 3) type of changes; and 4) potential impact of changes. ¶ 190. The NPRM seeks comment on

these tentative conclusions and on the appropriate filing requirements and timetables for disclosure. ¶ 191-192.

As an initial matter, any rule that the Commission adopts under section 251(c)(5) must comply with section 251(d)(3).[4] Section 251(d)(3) applies here because the notice requirement under section 251(c)(5) applies to transmission and routing, which is a section 251(c)(2) interconnection obligation. Thus, existing state commission notice rules that are consistent with the 1996 Act must be preserved. To preserve such state regulations, any Commission rules under section 251(c)(5) should define only minimum requirements of the statute. The FCC may, however, wish to go beyond the minimum requirements and adopt non-binding guidelines that state commissions could then adopt.

Under the inclusive approach required by section 251(d)(3), it is reasonable for the Commission to adopt general definitions of certain terms of section 251(c)(5) as proposed in paragraph 189 of the NPRM. In the absence of any citation in the NPRM to

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[4] Section 251(d)(3), which is entitled "Preservation of State Access Regulations," provides:

> In prescribing and enforcing regulations to implement the requirements of this section the Commission shall not preclude the enforcement of any regulation, order, or policy of a state commission that:
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> (A) establishes access and interconnection obligations of local exchange carriers;
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> (B) is consistent with the requirements of this section; and
>
> (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

an existing state regulation, the DCPSC tentatively agrees with the general definitions proposed in paragraph 189.

With respect to the types of information that the LECs must provide to comply with section 251(c)(5), the Commission should also follow the minimum requirements approach. The DCPSC tentatively agrees that the four types of information specified in paragraph 190 represent a reasonable minimum amount of information that should be required for a LEC to comply with section 251(c)(5). The Commission, however, should impose no additional or more specific requirements. The specific types of information needed by competitors will depend largely on the network and interconnection arrangements that exist in a given state. State commissions need flexibility to require disclosures that promote competition and to exempt LECs from disclosures that would be contrary to the public interest.

With respect to how public notice should be provided, any public notice requirement should recognize that state commissions may require filings at the state level. State commissions may need the required information for purposes of carrying out their responsibilities under section 252. Also, state commissions might be the most readily accessible source for small, putative competitors who wish to obtain the required filings.

Regarding the timetable for disclosure, the Commission should not define a single specific timetable that would be "reasonable" within the meaning of section 251(c)(5) in all

states. A timetable for disclosures should achieve a balance between the need to ensure the earliest possible disclosure of information needed by competitors and the need to impose the least administrative burden on incumbent LECs. The best way to achieve this balance is to allow state commissions to set timetables that are appropriate in light of local conditions. Any non-binding guidelines adopted by the Commission, of course, could assist state commissions in determining a reasonable timetable in light of the circumstances in a given state.

D. Access to Rights-of-Way

Section 251(b)4 imposes upon all LECs the duty to provide "access to the poles, ducts, conduits and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224." Section 224(c)(1), as amended by the 1996 Act, states that: "Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms and conditions, or access to poles, conduits and rights-of-way as provided in subsection (f) for pole attachments in any case where such matters are regulated by a state." Subsection (f) provides for "non-discriminatory access," and an exemption from such requirement for an electric utility under certain conditions. The NPRM (¶ 222) seeks comment on the meaning of non-discriminatory access and the standards for exempting an electric utility from this requirement. The NPRM (¶¶ 224-225)

also seeks comment on how to define requirements in section 224(h).

The NPRM fails to acknowledge that any definition the FCC provides in its regulations with respect to rates, terms and conditions for access to poles, conduits and rights-of-way would not apply in states where such matters are regulated by state commissions. Section 224(c)(1) provides that the Commission has no jurisdiction in such cases. Section 251(b)(4) does not confer jurisdiction on the FCC in such cases, because section 251(b)(4) simply requires "rates, terms, and conditions that are consistent with section 224." Thus, the FCC cannot impose on states that regulate matters covered by section 224 any Commission regulation interpreting section 224. Any such regulations would apply only to cases in which the FCC has jurisdiction because a state is not regulating matters covered by section 224. The FCC's regulations would otherwise serve as guidelines for the continued exercise of state regulation.

Section 253 would permit the FCC to preempt a state regulation or ruling in a matter covered by section 224, if such state action prohibited or had the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. But such preemption requires identification of a specific state action and proof as to how

such state action bars entry. Section 253 does not permit the FCC to achieve preemption by imposing its definitions of section 224 requirements on states that lawfully exercise jurisdiction over such matters.

CONCLUSION

The DCPSC recommends that the Commission adopt rules relating to numbering administration, dialing parity, notice of technical changes, and access to rights-of-way in accordance with the comments and recommendations set forth herein.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF
THE DISTRICT OF COLUMBIA

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